

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

74-1678

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Page 6

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

PHILIP ZANE, JEROME E. SILVERMAN,
and ROBERT S. PERSKY,

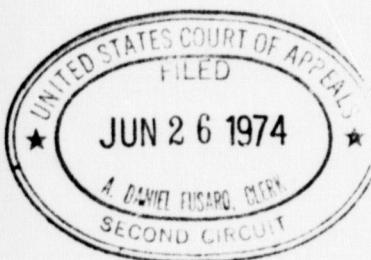
Defendants-Appellants.

ON APPEAL FROM A DENIAL OF A MOTION FOR A NEW TRIAL OF
THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANT-APPELLANT ROBERT S. PERSKY'S APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-x

UNITED STATES OF AMERICA

-v-

JEROME E. SILVERMAN, PHILIP
ZANE, and ROBERT S. PERSKY,

CASE NO. 73 Cr. 192

JUDGE Inzer B. Wyatt

Appellants.

-x

EXTRACT OF DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
April 11, 1974	Persky - Notice of Motion for New Trial and affidavit
April 11, 1974	Persky - Memorandum in Support of Motion
April 11, 1974	Zane & Silverman - Notice of Motion for New Trial and affidavit
April 11, 1974	Zane & Silverman - Memorandum in Support of Motion
May 17, 1974	Letter of Sandor Frankel to Judge Wyatt
April 22, 1974	Persky - Supplemental Affidavit
April 24, 1974	Government Affidavit in Opposition
April 24, 1974	Government Memorandum in Opposition
April 26, 1974	Zane & Silverman - Reply Memorandum
April 26, 1974	Memo Endorsed on Persky Notice of Motion - Motion Denied
April 26, 1974	Memo Endorsed on Zane & Silverman Notice of Motion -- Motion Denied
April 29, 1974	Persky - Reply Memorandum
May 6, 1974	Persky - Notice of Appeal
May 6, 1974	Zane & Silverman - Notice of Appeal
May 14, 1974	Transcript of Hearing Before Judge Wyatt April 26, 1974

1 ORAL OPINION OF JUDGE WYATT

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2 he had not yet been a man reformed, but none of that spoke to
3 his credibility subsequent to making his deal with the SEC,
4 and I only mention that to your Honor as an illustration of
5 why, in my opinion, this is not cumulative impeaching evidence.

6 THE COURT: It seems as if we are back to almost
7 a year ago because I can remember Mr. Frankel and Mr. O'Donnell
8 making arguments which were terribly persuasive in making one
9 to decide in accordance with their arguments, but it frequently
10 turned out that I didn't feel able to do so.

11 I have given this a good deal of consideration
12 and I have read all the papers even the pleadings, and in-
13 cluding the papers submitted this afternoon. However, I do
14 not think I can grant this motion.

15 There are two motions, but they raise the same
16 point, and that is that the admitted fraud of Yamata on Judge
17 Cooper after his testimony at the trial in our case requires
18 a new trial. But, as I have said a moment ago, the situation
19 here is that Yamata, of course, was not the only witness for
20 the government.

21 As I have ample cause to remember --- but I have
22 not reread the transcript --- his credibility was attacked and
23 severely attacked and ably attacked, as was perfectly proper,
24 and he was shown to be an accomplice, an admitted perjurer,
25 and guilty of criminal offenses, and counsel for the defendants

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2 are right in saying that as of the time of trial he was saying
3 in substance that he had reformed, and was then telling the
4 truth, where shortly thereafter, he was back committing, in
5 substance, perjury. I understand. Your points are well made.

6 But I still believe that since his credibility,
7 as the Court of Appeals said, was thoroughly explored; the
8 jury had before it the various felony charges that had been
9 made against Yamata, the pleas of guilty, his perjury before
10 the SEC, his hopes of leniency, and they were dealt with not
11 only in his testimony but in summation, and I remember in my
12 charge I gave --- I have to say "standard" instructions, but I
13 do have a usual formulation as to accomplice testimony
14 and to testimony of those with prior criminal convictions, and
15 I did call to the attention of the jury the fact the Yamata
16 was an accomplice, that he had criminal records.

17 I know that I said also that he was an admitted
18 perjurer; I think I may have done that at the request of one
19 or more of the defendants. I told the jury that the testimony
20 of accomplices and of those with criminal convictions and of
21 those who admitted perjury should be viewed with great caution
22 and scrutinized carefully, so I certainly impressed it on the
23 jury what they had to do in weighing Yamata's testimony.

24 Therefore, it seems to me despite able presenta-
25 tions this afternoon, what he did before Judge Cooper, which

1 pgjt 37

2 seems not only fraudulent but foolish, but still, whatever it
3 is, it seems to me to be cumulative on impeaching his cred-
4 ibility.

5 As I indicated, I have studied Mesarosh and
6 certainly counsel for the defendants should have brought it
7 to my attention. I do not think I knew the case before.

8 However, accepting the opinion of the Court, as
9 I must, despite the three dissents, I must conclude that this
10 is one of those instances to which the Court refers at 352 U.S.
11 9 where untruthful statements by a government witness subse-
12 quent to the trial are offered in support of a motion for a
13 new trial as newly discovered evidence affecting his credibility
14 at trial, and then, as I am sure you gentlemen have already
15 read, the Court says, "such an allegation by the defense
16 ordinarily will not support a motion for a new trial because
17 new evidence which is merely cumulative for impeaching, is not,
18 according to the often repeated statement of the Courts, an
19 adequate basis for the grant of a new trial."

20 Therefore, I feel obliged to deny these motions,
21 and since my statement of my reasons have been made a part
22 of the stenographic transcript, I will simply, in due course,
23 endorse the motion papers: motion denied for reasons stated
24 in open Court.

25 Thank you very much, gentlemen, for coming.

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YAMADA INDICTMENT

HP.III:sid
74-0050
N-57

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74CR11 100

UNITED STATES OF AMERICA, :
-----x

- v - :
-----x

AKIYOSHI YAMADA, :
-----x

Defendant. :
-----x

INDICTMENT

74 Cr.
U. S. DISTRICT COURT
FILED

JAN 31 1974

S. D. OF N. Y.

The Grand Jury charges:

1. On June 26, 1973, AKIYOSHI YAMADA, the defendant, having previously been convicted of conspiracy to commit securities fraud on Informations 73 Cr. 426 and 73 Cr. 427 and on Count One of Indictment 73 Cr. 363 in the Southern District of New York, was sentenced by the Honorable Irving Ben Cooper, United States Senior District Judge, to a term of imprisonment of two years, a term of probation of five years and a fine of \$30,000.

2. Immediately thereafter, from June 26, 1973 up to and including August 15, 1973, in the Southern District of New York, AKIYOSHI YAMADA, the defendant, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud the United States of America and the Honorable Irving Ben Cooper in his official capacity as a United States Senior District Judge for the Southern District of New York by submitting false, forged, fictitious and fraudulent documents and information to the Court in an attempt to avoid the sentence of imprisonment previously imposed upon him.

3. It was a part of said scheme and artifice to defraud that following the imposition of sentence the defendant AKIYOSHI YAMADA would file a motion before Judge Cooper pursuant to Rule 35, Federal Rules of Criminal Procedure, in which he would seek to persuade the Court to reduce or suspend the said term of imprisonment.

4. It was further a part of said scheme and artifice to defraud that, in support of the said motion to reduce sentence, the defendant AKIYOSHI YAMADA would knowingly submit and cause to be submitted to the Court false and fraudulent letters which implored the Court to show Yamada leniency because of his purported assistance to the poor and his purported long-standing interest and involvement in the rehabilitation of narcotics addicts, whereas, in truth and in fact, all of the information submitted to the Court concerning Mr. Yamada's charitable good works, including his purported rehabilitation of narcotic addicts was false, fictitious and fraudulent.

5. Among the means by which the defendant would and did carry out the said scheme and artifice to defraud were the following:

a) On or about July 18, 1973, the defendant YAMADA would and did send and cause to be sent the following letter, bearing a forged signature, to Judge Cooper:

[Letterhead of]

SYLVAN L. SACOLICK, M.D. (P.C.)
Narcotic Addicts Rehabilitation
Methadone Maintenance Program
2369 Second Avenue
New York, N. Y. 10035

Telephone 369-1144 or 534-5492

July 18, 1973

Hon. Irving Ben Cooper
U.S. District Court House
Foley Square
New York, N. Y. 10007

Your Honor:

I was shocked to hear that Mr. Aki Yashi Yamada has been sentenced to prison. I find it inconceivable that a man who has devoted a tremendous amount of time over the past two years to interview our patients and help secure employment for many, should be sentenced for violations which were committed before entering a new field of business and social outlook.

Mr. Yamada has proven invaluable to this clinic and I only wish there were more concerned citizens like him.

Very truly yours,

/s/

HP, III:slc
74-0050
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In truth and in fact, as YAMADA well knew, he had never devoted any time, either as a volunteer or as an employee, to assisting the patients or staff of the Sylvan L. Sacolick Narcotic Addicts Rehabilitation Methadone Maintenance Program and was in fact unknown to the said Sylvan L. Sacolick, M.D.

b) On or about July 18, 1973, the defendant AKIYOSHI YAMADA would and did cause the following letter to be sent to Judge Cooper:

[Letterhead of]

SYLVAN L. SACOLICK, M.D.,(P.C.)
Narcotic Addicts Rehabilitation
Methadone Maintenance Program
2369 Second Avenue
New York, N.Y. 10035

Telephone 369-1144 or 534-5192

July 18, 1973

Hon. Irving Ben Cooper
U.S. District Court
Foley Square
New York, N.Y. 10007

Your Honor:

It is with consternation and concern that I am writing in regards the sentencing of Mr. Aki Yoshi Yamada. When I was informed of his sentence, I tried to reach Mr. Jack Linden, who, I understand, is his probation officer, but I had no success.

The background of my association with Mr. Yamada is as follows. We met approximately two years ago. He was already involved in the field of entertainment, but was very open with me in describing violations of Federal security laws that he had committed while in the security business. When I told him of my work, he said he was very eager to assist this clinic in any way possible.

In fact, over the past few years, Mr. Yamada has contributed a great deal of time and energy to talking with our patients and sometimes has been faced with a degree of personal jeopardy since he was often in this neighborhood until late at night.

Mr. Yamada has contributed significantly to the expansion of our facilities. It is with the deepest regret that I find Mr. Yamada's present situation requires that I write this letter and I sincerely hope that this letter does have some mediating effect upon the penalties which Mr. Yamada now faces.

Very truly yours,

/s/ Paul T. Rogers

Paul T. Rogers, M.S.W.

Director of Social Service

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In truth and in fact, as YAMADA well knew, he had never associated with Paul T. Rogers, M.S.W., nor had he ever assisted the said Paul T. Rogers in any activity at the said Narcotic Addicts Rehabilitation Methadone Maintenance Program or contributed in any way to the expansion of said program.

c) On or about July 18, 1973, the defendant AKIYOSHI YAMADA would and did cause to be printed a quantity of stationary bearing the letterhead "FLUSHING CENTER FOR DRUG COUNSELING AND REHABILITATION, 116-20 132nd Street, South Ozone Park, N.Y."

d) On or about July 20, 1973, the defendant AKIYOSHI YAMADA would and did send and cause to be sent the following letter to Judge Cooner:

[Letterhead of]

FLUSHING CENTER FOR DRUG COUNSELING AND REHABILITATION
116-20 132nd Street, South Ozone Park, N.Y.
212-528-4525

July 20, 1973

Hon. Irving Ben Cooper
U.S. District Judge
U.S. Courthouse
Foley Square
New York, N. Y. 10007

Your Honor:

After being informed of the sentencing of Mr. Akiyoshi Yamada, I felt compelled to write you a letter.

While Mr. Yamada was awaiting sentencing, in support of his character I wrote two letters to Mr. Yamada's probation officer, Mr. Jack Linden. Apparently, Mr. Linden had either moved or was unavailable, since those letters were both returned. Phone communications were also unsuccessful. It is my understanding that probation officers are supposed to at least pretend an interest and thoroughly investigate their clients, prior to forwarding a probation report to a sentencing judge. In this particular case, for reasons which are unclear to me, justice was not done.

My association with Mr. Yamada began a year-and-a-half ago, through colleagues at the Sylvan L. Sakolick Methadone Clinic in Manhattan. He has put a lot of time and energy into helping many former addicts (some of whom are also former criminals) to locate jobs and better adjust to society. This kind of concern and encouragement to those people is invaluable.

In my own work with criminals, I have come to understand that the process of sentencing is one of the most difficult functions that a judge can perform. I am writing this letter because it is my feeling that since the crimes he committed two years ago, Mr. Yamada has been contrite, and has done his best to make a positive contribution to society. Therefore, I urge you to reconsider your decision at Mr. Yamada's reduction of sentence hearing, so that he can continue the fine work he has been accomplishing.

Sincerely,

/s/

In truth and in fact, as YAMADA well knew, the "Fictional Center for Drug Counseling and Rehabilitation never existed. Furthermore, as YAMADA also knew, the "Gerald Williams" whose signature appears at the conclusion of said letter was never the "Community Director" of said fictitious center but, rather, was the chauffeur for the defendant AKIYOSHI YAMADA.

e) On or about July 20, 1973 AKIYOSHI YAMADA, the defendant, would and did cause the following letter to be sent to Judge Cooper:

[Handwritten Letter]

HP
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N-5

Dear Judge

When I heard that Mr. Akiyoshi Yamada was going to jail I thought I should write you a letter. My family's on welfare then we had to find another place when Mr. Akiyoshi Yamada helped us find an apartment. We met him at a rehabilitation clinic in Flushing. When my son Charles needed a job Mr. Akiyoshi Yamada got a job for him. Whenever I got troubles he helps us.

If I got problems with the Welfare he calls them up for me and everything turns out O.K. He is a good man and I hope he doesn't go to jail.

Sincerely,

/s/ Mae Lillian Meekins

In truth and in fact, as the defendant YAMADA well knew, all of the information contained in the above letter was false and fictitious.

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f) On or about July 25, 1973 the defendant AKIYOSHI YAMADA would and did send and cause to be sent the following letter to Judge Cooper:

7/25/73

Phoenix Entertainment Associates, Inc.

201 EAST 28TH STREET • NEW YORK, N.Y. 10016
(212) 689-7420

July 25, 1973

Hon. Irving Ben Cooper
U.S. District Judge
United States Courthouse
Foley Square
New York, N.Y. 10007

Your Honor:

As Mr. Akiyoshi Yamada's employer, I am taking the liberty of writing you directly, as all attempts at contacting his probation officer, Mr. Jack Linden, have failed. I have enclosed a copy of a letter I sent Mr. Linden in February, to which I received no reply or acknowledgement. Over the past few months I have made numerous telephone calls, was unable to reach him, and never even got a message that he had returned a call. I find it strange that a probation officer would make no effort to contact a client's employer.

Over the past year-and-a-half, Mr. Yamada has worked twice as hard as usual, due to his commitment to the rehabilitation of drug addicts. He has not only been personally involved, but has involved the company as well. I am happy to say that it has been a highly rewarding experience for all concerned.

Sincerely,

Edward A. Loughran
President

In truth and in fact, as YAMADA well knew, neither he nor Phoenix Entertainment Associates, Inc., had devoted any time whatsoever to the rehabilitation of drug addicts. Furthermore, as YAMADA also knew, the said Edward A. Loughran had made no

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efforts whatsoever to contact any United States Probation officer on behalf of YAMADA.

6. On or about the dates hereinafter set forth, AKIYOSHI YAMADA, the defendant, unlawfully, wilfully and knowingly and for the purpose of executing and attempting to execute said scheme and artifice to defraud, did place and cause to be placed in post offices and authorized depositories for mail matter letters to be sent and delivered by the Postal Service to the Honorable Irving Ben Cooper, United States District Judge, United States Courthouse, Foley Square, New York, New York and did knowingly cause said letters to be delivered by mail in the Southern District of New York according to the directions thereon as hereinafter set forth:

<u>COUNT</u>	<u>DATE</u>	<u>LETTER</u>
1	July 18, 1973	Letter set forth in paragraph 5(a) herein.
2	July 18, 1973	Letter set forth in paragraph 5(b) herein.
3	July 20, 1973	Letter set forth in paragraph 5(d) herein.
4	July 20, 1973	Letter set forth in paragraph 5(e) herein.
5	July 25, 1973	Letter set forth in paragraph 5(f) herein.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT SIX

The Grand Jury further charges:

1. From on or about June 25, 1973 up to and including August 15, 1973, in the Southern District of New York, AKIYOSHI YAMADA, the defendant, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree with persons to the Grand Jury known and unknown to violate Title 18, United States Code, Section 1341 and to defraud the United States and its departments, agencies and branches in connection with the performance of their lawful governmental functions, including the lawful governmental function of the

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United States judiciary in imposing sentence as required by law upon those who stand convicted of crimes.

2. It was a part of said conspiracy that the defendant AKIYOSHI YAMADA and the said co-conspirators would and did devise and intend to devise a scheme and artifice to defraud the United States of America and the Honorable Irving Ben Cooper, in his official capacity as United States Senior District Judge for the Southern District of New York by submitting false, forged, fictitious and fraudulent documents and information to the Court in an attempt to avoid the sentence of imprisonment previously imposed upon him.

3. It was further a part of said conspiracy that the defendant AKIYOSHI YAMADA and the said co-conspirators, for the purpose of executing said scheme and artifice to defraud, would and did place and cause to be placed in post offices and authorized depositories for mail matter the said false, forged, fictitious and fraudulent letters to be sent and delivered by the Postal Service to Judge Cooper.

OVERT ACTS

In furtherance of the said conspiracy, and to effect the objects thereof, the defendant AKIYOSHI YAMADA committed the following overt acts in the Southern District of New York:

1. In July, 1973 the defendant AKIYOSHI YAMADA directed his attorney to file a motion before Judge Cooper pursuant to Rule 35, Federal Rules of Criminal Procedure, to reduce or suspend his pending two-year sentence of imprisonment without telling said attorney of his intention to submit false, forged and fraudulent letters in support of said motion.

2. On or before July 18, 1973, the defendant AKIYOSHI YAMADA caused the letters set forth in Counts One and Two herein to be mailed to Judge Cooper.

3. On or about July 20, 1973, the defendant AKIYOSHI YAMADA caused the letters set forth in Counts Three and Four herein to be mailed to Judge Cooper.

4. On or about July 25, 1973, the defendant AKIYOSHI YAMADA caused the letter set forth in Count Five herein to be mailed to Judge Cooper.

5. On or about July 25, 1973, the defendant AKIYOSHI YAMADA directed his secretary to forge a letter in the hand of an untutored narcotics addict, which letter Yamada directed should falsely state that Yamada had assisted the writer to rid herself of addiction to narcotics and to rehabilitate herself. Said fraudulent letter was written pursuant to said instructions but was destroyed by the writer before being mailed.

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6. On or about July 25, 1973, the defendant AKIYOSHI YAMADA directed his secretary to obtain from her fiance a forged letter of similar content to the letter described in paragraph five above. Said letter was also written pursuant to these instructions but was also destroyed by the writer before being mailed.

(Title 18, United States Code, Section 371.)

COUNTS SEVEN THROUGH ELEVEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, AKIYOSHI YAMADA, the defendant, unlawfully, wilfully and knowingly and corruptly did endeavor to influence, obstruct and impede the due administration of justice by submitting and causing to be submitted to a United States District Judge false and fraudulent letters, as hereinafter set forth, in support of his motion pursuant to Rule 35, Federal Rules of Criminal Procedure, to reduce or suspend a two-year term of imprisonment previously imposed upon said defendant:

<u>COUNT</u>	<u>DATE</u>	<u>LETTER</u>
7	July 18, 1970	Letter set forth in Count One herein.
8	July 18, 1973	Letter set forth in Count Two herein.
9	July 20, 1973	Letter set forth in Count Three herein.
10	July 20, 1973	Letter set forth in Count Four herein.
11	July 25, 1973	Letter set forth in Count Five herein.

(Title 18, United States Code, Sections 1503 and 2.)

COUNTS TWELVE THROUGH SIXTEEN

The Grand Jury further charges:

1. The allegations contained in paragraphs one through five of Counts One through Five herein are hereby re-alleged and incorporated herein by reference.

2. On or about the dates hereinafter set forth, in the Southern District of New York, AKIYOSHI YAMADA, the defendant, in a matter within the jurisdiction of a department and agency of the United States, to wit, the motion pending in the United States District Court for the Southern District of New York to reduce or suspend a two-year term of imprisonment previously imposed upon the said defendant, unlawfully, wilfully and knowingly did make and use and cause to be made and used false writings, as hereinafter set forth, knowing the same to contain false, fictitious and fraudulent statements:

<u>COUNT</u>	<u>DATE</u>	<u>FALSE WRITING</u>
12	July 18, 1973	Letter set forth in Count One herein.
13	July 18, 1973	Letter set forth in Count Two herein.
14	July 20, 1973	Letter set forth in Count Three herein.
15	July 20, 1973	Letter set forth in Count Four herein.
16	July 25, 1973	Letter set forth in Count Five herein.

(Title 18, United States Code, Sections 1001 and 2.)

Albert S. Rosen
FOREMAN

PAUL J. CURRAN
United States Attorney

1 TRANSCRIPT OF YAMADA PLEA

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 UNITED STATES OF AMERICA :

6 vs. :

7 AKIYOSHI YAMADA. : 74 Cr. 100

8 -----x
9 Before: HON. MORRIS E. LASKER, D.J.

10 New York, April 15, 1974;
11 10.30 A.M.

12 APPEARANCES:

13 HENRY PUTZEL, III, ESQ.,
14 Assistant U.S. Attorney,
15 of Counsel.

16 MARTIN POLLNER, ESQ.,
17 Attorney for Defendant.
18 -----

2 MR. POLLNER: The defendant is ready, your
3 Honor.

4 THE COURT: Mr. Pollner, you have an application
5 to make, do you?

6 MR. POLLNER: Yes, your Honor.

7 At this time the defendant, Akiyoshi Yamada,
8 will enter a plea to Counts 6 and 12 through 16 of
9 Indictment 74 Cr. 100.

10 THE COURT: 6 and 12 through 16, is that correct?

11 MR. POLLNER: Yes.

12 THE COURT: How long have you represented Mr.
13 Yamada, Mr. Pollner?

14 MR. POLLNER: Since September of last year.

15 THE COURT: How much time would you say you
16 spent with him on this case?

17 MR. POLLNER: We have discussed this case quite
18 substantially both in the Federal House of Detention at
19 West Street and by telephone and by letter communication.

20 THE COURT: Are you satisfied that Mr. Yamada
21 understands the nature of the charges against him here in
22 this indictment?

23 MR. POLLNER: Yes, I do.

24 THE COURT: And that he understands the nature
25 and consequences of pleading guilty to these charges?

2 MR. POLLNER: Yes.

3 THE COURT: As I see it here, and I wish to be
4 corrected if I am not right, each of these counts carries
5 a possible five-year penalty, is that right, and in some
6 cases fines up to \$10,000 and at least \$1000?

7 MR. PUTZEL: That is correct. The false
8 statement counts carry \$1000 and the conspiracy count
9 carries a fine of \$10,000 and all carry five years'
10 maximum.

11 THE COURT: You have explained that, have you,
12 to Mr. Yamada?

13 MR. POLLNER: Yes.

14 THE COURT: Are you satisfied also that Mr.
15 Yamada, if he went to trial, the government would prevail
16 on the counts which he is proposing to plead guilty to?

17 MR. POLLNER: Yes, your Honor.

18 THE COURT: I will now address myself to Mr.
19 Yamada.

20 BY THE COURT:

21 Q Mr. Yamada, how old are you, sir?

22 A 31 years old.

23 Q How much education have you had?

24 A Through graduate school.

25 Q Is that in this country?

1 A Yes.

2 Q Born here?

3 A No, sir.

4 Q How long have you lived in the United States?

5 A I came to college here.

6 Q Are you in good health?

7 A Yes, sir.

8 Q Have you ever been addicted to drugs or alcohol?

9 A No, sir.

10 Q Are you under the influence of any sedative or
11 drug?

12 A No, sir.

13 Q Mr. Pollner has stated that he has spent a good
14 deal of time going over this case with you. Have you been
15 satisfied with the services he has rendered as a lawyer?

16 A Absolutely.

17 Q Has he answered any questions that you have had
18 about this case?

19 A Yes, sir.

20 Q He says that you wish to plead guilty to count
21 6 and counts 12 through 16.

22 Have you read those counts in this indictment?

23 A Yes.

24 Q You are aware of the contents of those counts?

1 A Yes.

2 Q I will try to paraphrase them so we are sure
3 we are talking about the same thing.

4 Count 6, as I see it, charges that you and
5 others conspired to violate the law by defrauding the
6 United States and Judge Cooper by submitting false,
7 forged, fictitious and fraudulent documents in an attempt
8 to avoid a sentence of imprisonment previously imposed on
9 you.

10 Counts 12 through 16 state in a matter within
11 the jurisdiction of this Court, that is a motion pending
12 to reduce or suspend a two-year sentence imposed on you,
13 you unlawfully, willingly and knowingly made use of false
14 writings and those writings are the letters set forth in
15 counts 1 and 2, 3 and 4 of the indictment, presumed
16 communications to Judge Cooper, is that right?

17 MR. POLLNER: That is correct.

18 Q Do you understand those to be the counts in
19 question?

20 A Yes, your Honor.

21 Q Mr. Yamada, will you tell me just what you did
22 that renders you guilty of those charges?

23 A I conspired with others to have letters sent to
24 Judge Cooper that were knowingly false and there were five

2 letters total.

3 Q Can you give me an example of the contents of
4 one of the letters and what its purpose was?5 A I believe one of the letters was a letter sent
6 by my employer, Mr. Edward Logner, who with myself drafted
7 a letter stating what my functions were at the company
8 that I was employed at, and listed various meetings, et
9 cetera, that I was reported to have attended which were
10 false.11 Q And you were fully aware that the facts con-
12 tained in the letter sent to Judge Cooper were not true,
13 is that correct?

14 A That is correct. -----

15 Q And you were under no duress of any kind or
16 force to compel you to do these things, you did them
17 voluntarily? -----

18 A That is correct.

19 Q Do you understand that you have a right to go to
20 trial under these charges and the right to be tried by a
21 jury of 12 men and women? ..

22 A Yes.

23 Q Do you understand that you could not be found
24 guilty on any of these counts unless all members of the
25 jury unanimously agreed that you had been proven guilty

1 gp

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2 beyond a reasonable doubt?

3 A Yes.

4 Q Do you understand if I accept your plea of
5 guilty I can impose the same penalty that could have been
6 imposed if you were tried and found guilty by a jury?

7 A Yes.

8 Q Do you understand that the penalty on each of
9 these counts involves the possibility of a five-year
10 sentence on each count?

11 A Yes.

12 Q And, in addition, involves fines of somewhere
13 between \$1000 and \$10,000?

14 A Yes, your Honor.

15 Q Have you been told by anybody that if you pleaded
16 guilty you would receive a lighter sentence than if you
17 didn't plead guilty? - - - - -

18 A No.

19 Q Have you been threatened by anybody that if you
20 did not plead guilty you or anybody close to you would be
21 harmed in any way?

22 A No, your Honor.

23 Q Do you understand that if I accept your plea
24 of guilty you have no automatic right to withdraw that
25 plea? For all practical purposes the plea of guilty is

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2 final.

3 A Yes.

4 Q Do you understand if I accept your plea of
5 guilty you would have no right to appeal it in a higher
6 court; that is, any lawful sentence that I impose on you?

7 A Yes, your Honor.

8 Q Are you pleading guilty voluntarily of your own
9 free will?

10 A Yes.

11 Q Why are you pleading guilty?

12 A I am pleading guilty because I feel that I was
13 guilty of these crimes and that I would like to clear the
14 slate and I see no benefit by going to trial.

15 THE COURT: That is a very commendable state-
16 ment.

17 Gentlemen, I am satisfied that Mr. Yamada very
18 clearly understands the nature of the charges against him
19 here and of his rights to a jury trial and otherwise, that
20 he has intelligently and voluntarily weighed those rights.

21 He has voluntarily pled guilty to the charges
22 and there is a factual basis for his doing so and I am
23 willing to accept the charges.

24 Is there anything you wish to add?

25 MR. PUTZEL: Nothing further, your Honor.

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2 THE COURT: The date of sentence will be May
3 17 at 10 o'clock in this courtroom.

4 I take it the government is satisfied to continue
5 Mr. Yamada's bail arrangements as it is?

6 MR. PUTZEL: The bail, as it is fixed now, is
7 \$10,000 personal recognizance bond which was fixed by
8 agreement between counsel ad a nominal figure with no
9 prejudice to the government should we wish to make an
10 application if Mr. Yamada is released in some fashion
11 from the sentence which he is presently serving.

12 THE COURT: It is the present sentence?

13 MR. POLLNER: He is in Allenwood Penitentiary
14 under a two-year sentence and has recently been denied
15 parole.

16 THE COURT: I saw a film on television this
17 weekend about Allenwood. Did you see that?

18 THE DEFENDANT: I was there while they were
19 filming it.

20 THE COURT: It showed Mr. Crowe, and others of
21 you, saying it was no country club. How much longer have
22 you got?

23 THE DEFENDANT: Over a year left, your Honor,
24 a year and two or three months.

25 THE COURT: What got you there?

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2 THE DEFENDANT: Securities Law violation.

3 MR. PUTZEL: I would guess we have to satisfy
4 the writ that brought Mr. Yamada here.

5 THE COURT: Very good.

6 MR. POLLNER: Thank you very much, your Honor.

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1 TRANSCRIPT OF YAMADA SENTENCE

1

2 UNITES STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF AMERICA

5 UNITED STATES OF AMERICA, :

:

6 - v s - :

74 Cr. 100

7 AKIYOSHI YAMADA, :

:

8 Defendant. :

:

10 B e f o r e :

12 HON. MORRIS E. LASKER,

13 District Judge.

14 New York, N. Y.
15 May 20, 1974 - 5:00 p.m.

16 A p p e a r a n c e s :

17 PAUL J. CURRAN, ESQ.,
18 United States Attorney for the
19 Southern District of New York.
BY: HENRY PUTZEL III, ESQ.,
20 Assistant United States Attorney.

21 MARTIN R. POLLNER, ESQ.,
22 Attorney for the Defendant.

2 THE CLERK: The United States of America vs.
3 Akiyoshi Yamada.

4 MR. PUTZEL: The Government is ready.

5 THE CLERK: Is the defendant ready?

6 MR. POLLNER: The defendant is ready, your Honor.

7 THE COURT: Mr. Putzel, as you know, you submitted
8 to me a long, and I may say in my experience, unusual
9 memorandum, although I understand why the Government may
10 have felt differently about this case than some others. I
11 have read it. I have read all the material submitted to me
12 by the defendant. I have read all the proceedings before
13 Judge Cooper and I have read the earlier pre-sentence report.

14 Is there anything that the Government believes
15 I have not considered?

16 MR. PUTZEL: No. I have no wish to make a speech,
17 your Honor, or a statement to the Court as contained in the
18 memorandum and it's made quite clearly because we consider
19 this to be a very aggravated case and that is before the
20 Court and we ask your Honor to take it into consideration.

21 THE COURT: Very good. You may be seated.

22 Mr. Pollner, I also have, and I don't mean by
23 saying this to cut you short, but just to let you know, read
24 all the material you have submitted and I want Mrs. Yamada
25 -- I assume that is Mrs. Amada -- in her presence to say

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2 that I read her letter on Friday when I received it and it
3 was too late for me to let you know, but I had received it,
4 but I appreciate your writing and I take into consideration
5 what you have said.

6 Naturally a judge has to give some thought before
7 he arrives at this point as so close to sentencing as to
8 what he is going to do, so I have a fairly good idea in
9 my own mind what I am going to do but that does not mean,
10 and I am specifically saying this because of the particular
11 peculiarity of this case, that I have an absolute closed
12 mind. I would be glad to hear from defense counsel and
13 from Mr. Yamada if he wishes to speak.

14 MR. POLLNER: Thank you, your Honor.

15 I don't mean to take too much of the Court's
16 time, but because we are talking about --

17 THE COURT: Look, defense counsel in sentencing
18 should never at least before me make that kind of a remark.
19 A man's future depends on his sentencing. It may be at
20 the end of the day that I am even short-tempered when I
21 say that, but for God's sake, nothing could be more important.

22 MR. POLLNER: Not only is nothing more important,
23 but defense counsel hopes to meet the task, your Honor, and
24 not give a ritualistic statement of leaning but try to
25 give a fair and balanced presentation to this Court as an

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2 aid to the Court in this excruciating task.

3 As the Court is aware, Mr. Yamada is now presently
4 serving two years imprisonment to be followed by five
5 years probation.

6 THE COURT: Yes.

7 MR. POLLNER: Of critical importance is the fact
8 that the crimes committed to which he stands sentenced
9 today all occurred all prior to his imprisonment in
10 Allenwood.

11 I respectfully submit to this Court that he is
12 a different man today. He is a different and rehabilitated
13 man today than he was when he committed these crimes and
14 when he was when he stood before Judge Cooper.

15 The Court has received letters from Mr. Yamada's
16 supervisors at Allenwood and these bear vivid testimony
17 to the rehabilitation of Mr. Yamada.

18 The best judges are the who Akiyoshi Yamada is
19 today, your Honor, are those men who had an opportunity to
20 work with him on a day-to-day basis. These men are trained
21 professionals and it is their judgment that it would be
22 counter-productive to impose a further term of imprisonment
23 and that he is ready to be returned to society today.

24 I quote from Mr. Dobler:

25 "I feel that Akiyoshi Yamada has been rehabilitated--"

3 THE COURT: Which one are you quoting?

4 MR. POLLNER: George Dobler, last paragraph on
5 Page 1.

6 "I feel that Akiyoshi Yamada has been
7 rehabilitated, certainly to the point of functioning in a
8 very normal life style. I feel on the basis of my past
9 professional experience any further incarceration beyond
10 his present sentence would only be detrimental to his
11 well being and progress to date.

12 "I am well aware of Akiyoshi's past shortcomings,
13 but I feel that his behavior has been tempered by his
14 present period of incarceration. I wish you would take
15 these comments into consideration on the upcoming sentence."

16 Of critical significance, your Honor, not
17 highlighted in my memorandum because it was written before
18 most of these letters came in, is the fact that his
19 rehabilitation was not only for himself but he devoted
20 himself to helping others and that he made his prison
21 experience rehabilitative to other people, and for that
22 I must also quote this time from Mr. Howard's letter, John
23 Howard, Director of Recreation:

24 "He has been an inspiration to many residents
25 of Allenwood because of his ability and willingness to
help any individual develop his capabilities to the utmost."

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2 I quote from his case worker, Mr. Page True,
3 "In this group situation, Akiyoshi was a very honest and
4 sincere person who was always and able to aid others with
5 their difficulty. He could definitely be related as
6 a group leader."

7 Now, I will talk a bit later, your Honor, to what
8 I consider to be a totally unbalanced and biased memorandum
9 submitted by the Government and I think we have to spend
10 some time on it.

11 In the Government's memorandum they quote at
12 length at their speculation for Mr. Yamada's motive in
13 this case, pure speculation, and they quote from Judge
14 Cooper and state, "That there are no testimonials such
15 as was presented yesterday of moral deportment over
16 a substantial period of time that came to stand beside
17 those who had to face sentence yesterday."

18 THE COURT: Mr. Pollner, I thought that everybody
19 agreed as to why Mr. Yamada did this. He did it to get
20 a shorter sentence and he did think that Judge Cooper
21 thought that those things were important.

22 MR. POLLNER: Your Honor, my point is that Judge
23 Cooper talked about the lack of testimonials and how
24 important that is in judging a man.

25 THE COURT: I know.

2 MR. POLLNER: And I am calling it to this Court's
3 attention for the testimonials that this Court now has
4 before it of what Akiyoshi Yamada has been through the
5 last year.

6 THE COURT: That is a slight of hand that
7 doesn't impress me particularly.

8 I don't mean to say that the testimonials Mr.
9 Yamada has received the last year are not something very
10 significant and shouldn't be taken into consideration,
11 but they in and of themselves, of course, don't forgive
12 having forged testimonials of an earlier time.

13 MR. POLLNER: I am not offering them for that,
14 your Honor, and I say to this Court, as I have in my
15 memorandum, that what he did was a stupid act and a criminal
16 act and he has plead guilty to it. I am just calling
17 to the Court's attention the fact that the Government's
18 memorandum has done many things, one of which is to focus
19 this Court's attention to matters that are not before it
20 today.

21 THE COURT: I think what the Government's
22 memorandum did and had a right to do was to point out that
23 this particular kind of act has repercussions that might
24 not have been thought of otherwise, to wit, of course, it
25 does strike at the heart of the judicial system and,

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2 secondly, that it is going to make Mr. Yamada himself
3 less useful as a witness than he would have been otherwise.

4 MR. POLLNER: That may be true, your Honor,
5 and I don't think we can speculate on that, but I know
6 when Mr. Yamada leaves here he has a deal with the
7 Government that he is going to cooperate with them and
8 they asked for his testimony in other matters, so I do
9 think it was over-stated in its memorandum.

10 THE COURT: It is a very sharp memorandum and
11 I don't take it at face value.

12 MR. POLLNER: Not only sharp, your Honor, there
13 is an outrageous letter there from the SEC charging Mr.
14 Yamada with matters that he has never been indicted or
15 accused of, 90% of those matters, 10% of those matters
16 he has plead to, he has been convicted for and is serving
17 two years in prison for.

18 Mr. Brodsky before Judge Cooper -- and I don't
19 want to argue the whole thing before Judge Cooper before
20 this Court -- in a balanced memorandum stated, "Yamada's
21 contribution to this office and to the SEC's law
22 enforcement efforts in the frauds area has been significant,
23 unfettered and very valuable. In addition to telling
24 the office of the involvement of others in the areas
25 indicated by the attached summary, Yamada has given us

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2 leads to suspect activity which may result in further
3 areas of criminal conduct of others being discovered."

4 It continues to go on and talk about his insights
5 and cooperation in rooting out wrongdoing of persons with
6 fiduciary positions of trust, lawyers, accountants and
7 others, so I do think the memorandum submitted by the
8 Government in the instant case talking about his coopera-
9 tion did not call this Court's attention as Mr. Brodsky
10 had.

11 As a former prosecutor myself, your Honor, I
12 know some of the things that occur here and the difficulty
13 in every step in the criminal justice system.

14 The probation officer in this case saw Yamada
15 for about a half hour to 40 minutes and submitted a
16 memorandum, probation report to this Court in which he
17 goes into deep psychological conclusions. He talks about
18 Mr. Yamada's ego and his manipulative nature.

19 The pre-sentence report submitted by the Probation
20 Department tracks the Government's memorandum fully, and
21 as Judge Frankel wrote in his book, your Honor, criminal
22 sentences, law without order, "Much that appears in the
23 pre-sentence report originates from the Prosecutor or the
24 Prosecutor's files and is passed on with little or no
25 independent scrutiny. The result is a good deal of raw

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2 data not rendered pure or more reliable by being recounted
3 as unqualified facts."

4 There are many errors in that probation report,
5 such as the fact that he had not submitted a net worth
6 statement, which we have told Mr. Best what his net worth
7 statement was and his wife had told him.

8 But more than that, he and the Government talk
9 about how well executed this scheme was and that it is
10 the mark of a man who intentionally embarked on this
11 enormous crime. The pure stupidity of the crimes, of a
12 man causing letters to be submitted to a Federal Judge
13 which had to be found out speaks in bold relief, your Honor,
14 of the emotional state he was suffering during those
15 30 days from the time he was sentenced until the time he
16 went into prison and, again, I do not excuse his conduct.
17 But here was a man who was fearing prison, whose
18 co-conspirator, John Galanis, who Mr. Brodsky had admitted
19 was a partner in all his crimes, received six months
20 in prison, receiving two years and committed the kind of
21 crimes he stands before this Court for.

22 I respectfully submit to sentence a man to a
23 further term of imprisonment, a man who has already been
24 rehabilitated, would be counter-productive.

25 Your Honor, I have been involved in prosecuting

2 and in charge of law enforcement for many years in
3 different departments. One thing we are all very interested
4 in is this correctional system of ours. Here is a case --

5 THE COURT: When you say, "we are all interested
6 in it", who are you speaking of?

7 MR. POLLNER: The Court, the Prosecutor, the
8 Probation Department.

9 THE COURT: You mean all the people here?

10 MR. POLLNER: Yes.

11 The correctional system in this case has corrected.
12 We have a different man before this Court today than the
13 man who wrote those letters.

14 THE COURT: Well, you know, Socholes said you
15 never know whether a man is happy until he is dead, and
16 the question whether a man is corrected can't always be
17 determined in the very first few months, although I think
18 the signs are encouraging and have to be taken into
19 consideration.

20 MR. POLLNER: I have never seen testimonials
21 such as that, and I quote from Mr. Dooley, "Akiyoshi
22 Yamada has demonstrated that he is aware of his circumstances,
23 yet still desires to help other people. I believe that he
24 is well aware of why he is here and he has adjusted well.
25 He should be given every recognition for his efforts while

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2 here at this institution."

3 Your Honor, there are many men at Allenwood who
4 are watching these proceedings today. Akiyoshi Yamada
5 even in the pre-sentence report is one of the most
6 excellent prisoners they have ever had. He is a model
7 prisoner. There are other prisoners up there who want
8 to know how Akiyoshi Yamada will stand today.

9 Now, there are men, your Honor, who are sentenced
10 by this Court, hardened criminals, who get prison sentences
11 and feel they can do them on one foot. Here we have a
12 sensitive, creative human being who is not a hardened
13 streetwise criminal and to every day prison to him is a
14 living hell.

15 And the Government's memorandum, and I see the
16 Court has read it carefully, argues that Mr. Yamada's
17 cooperation should not be taken into consideration at all.
18 But this cooperation was the foundation upon which they
19 worked. After he committed these crimes he still cooperated
20 and made cases for the Government.

21 The Government puts on drug addicts, drug
22 pushers, killers as witnesses, and say, "We don't vouch
23 for these witnesses because this is the type of a man
24 that conspired with these other defendants."

25 Now, for them to say, "We are going to be

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2 inundated with law suits because of this matter" is
3 ridiculous.

4 I pointed out in my memorandum that his parole
5 has been denied, despite the fact that Judge Cooper felt
6 that in all likelihood the parole board would grant
7 parole. I respectfully submit that he suffered there when
8 he could have been paroled in March and that he will be
9 doing his two years of imprisonment.

10 THE COURT: He will get good time.

11 MR. POLLNER: And he will be hopefully in
12 December of this year released, about eighteen months.

13 Now, I know that little is to be gained by being
14 critical of the Government and my friend and colleague,
15 Mr. Putzel, I don't mean it personally, your Honor, --

16 THE COURT: The reason that little is to be
17 gained is because I don't sentence people on the basis
18 whether the Government is right or wrong by what they have
19 to say, but what I think.

20 MR. POLLNER: In all respects I must correct
21 what is before the Court in the Government's memorandum,
22 because as Judge Frankel also pointed out that he rarely
23 submits any semblance of a full, rounded and well balanced
24 report which a rational sentence can be founded on, and
25 it is sad to say that in this case the Government has not

2 deviated from this practice.

3 THE COURT: Mr. Pollner, I really think this
4 is a futile part of your discussion. I am sentencing
5 Mr. Yamada, not Mr. Putzel.

6 MR. POLLNER: But the point, your Honor, is this,
7 the facts submitted to the Court almost cries out for
8 another trial, a trial, a min-trial of the version of
9 the case that the Government was presenting. There were
10 no innocent dupes that he led astray. The Government
11 fails to state that one of these so-called innocent
12 dupes, Mr. Rogers, is in jail, another one of these so-called
13 innocent dupes, one of his witnesses, sought to blackmail
14 another witness.

15 THE COURT: But you haven't dealt at all with
16 the charge that your own client admitted.

17 What do you think of it? Do you think it is
18 all right?

19 MR. POLLNER: I have admitted in my memorandum
20 before the Court --

21 THE COURT: Let us stick with that. That is what
22 I am concerned with.

23 MR. POLLNER: That is not all right. It is a
24 serious offense and I am saying to this Court that this
25 act was caused by the type of craziness that this defendant

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2 engaged in in that one-month period, that he is a different
3 man than what he was when he submitted those letters to
4 the Court and that the Court should take his emotional
5 experience into consideration and the reasons why it
6 occurred and the fact that we have a man that is contrite
7 and rehabilitated and respectfully submit that no further
8 term of imprisonment should be imposed.

9 THE COURT: Thank you.

10 Mr. Yamada, as you know from the previous
11 experience that you had here, you have the right to say
12 anything you wish at this time and I always invite a
13 defendant to exercise that right if they are capable of
14 doing so. Of course, many men prefer not to.

15 I have received the letter that you sent to Mr.
16 Best. I read it with the greatest of care. But I would
17 still be very happy to hear anything you wish to say at
18 this time, so it is your opportunity now.

19 THE DEFENDANT: Your Honor, my attorney has
20 eloquently and thoroughly presented the testimony in my
21 behalf. However, I appreciate the opportunity that you
22 have given me or granted me to speak in my behalf.

23 Originally I had no intention today of speaking
24 to you. This is not to say that over the last month or
25 so this proceeding has not constantly been on my mind both

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2 at West Street these past few days, particularly so then,
3 and also while I was at Allenwood awaiting the sentence.
4 I know that the hour is late, but I just feel that I have
5 to say a few words.

6 THE COURT: Of course.

7 THE DEFENDANT: Which I couldn't convey to Mr.
8 Best because, as I understood the purpose of my letter
9 to Mr. Best was to present my version of the facts, any
10 omissions, additions or what-have-you to the indictment,
11 which I tried to do as fairly and as completely as I
12 possibly could.

13 What I next have to say is probably not something
14 that you hear from somebody usually being sentenced, but
15 I am going to take the liberty to say it anyway.

16 Prison life, no matter where you are physically,
17 whether it be in a State institution, a Federal institution,
18 maximum or minimum security, the loneliness, the lack
19 of privacy, the terror, the fear that an inmate feels,
20 only an inmate can understand this. Prior to my
21 incarceration my feelings about going to prison were no
22 different than I suppose the standard version that one
23 gets about prison from various periodicals, movies, or
24 what-have-you and I was scared, I was irrational of
25 every conceivable fear concerning prison life, particularly

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2 so during those thirty days.

3 When I reached prison I realized that only I
4 could do my sentence, nobody else. It was my sentence
5 to do. That if I was going to get through this period
6 that I had to learn to cope with whatever situation arose.
7 And I also found that contrary to the views of many
8 social scientists, that if you seek it, the prison system
9 can help you and can help many individuals to rehabilitate.

10 I have tried through counsel, through giving
11 as much time and effort of myself and my talents to take
12 this opportunity while I was at prison, while I am in
13 prison, and I feel that today there is no question that
14 I am a different, changed individual and certainly a
15 rehabilitated one.

16 This in no way is to minimize the crime to which
17 I plead guilty to, but I just feel that where I stand
18 today I wanted to reflect.

19 I know, your Honor, I have made a terrible mistake.
20 I have caused a great deal of pain, most of all to myself
21 and my family, and I beg your Honor not to prolong my
22 period of incarceration and please know that if your
23 Honor can exercise mercy that I would spend the rest of
24 my life proving you worthy of your trust.

25 I thank you.

2 THE COURT: Thank you very much, Mr. Yamada.

3 Mr. Yamada, nothing would make me happier and
4 I guess in most cases most judges, too, than to be absolutely
5 certain that you had become another person and there is
6 no necessity to do anything here.

7 It is a very, very difficult role, and I don't
8 want to sound as if I feel sorry for myself because I don't.
9 I know the pain that people who are sentenced here go
10 through. I know that it is harder for you than somebody
11 else. But the difficulty of my job is to balance what
12 I think is fair for you with what I think is necessary
13 from a public point of view.

14 The crime that you committed here -- I am
15 talking about these false letters -- is what I call a
16 nasty crime. I am not doubting for the moment the reasons
17 why you did it, but I say it was nasty because, first of
18 all, it was pure deception and, secondly, it was a continuing
19 course of conduct which you admitted prior to this time.
20 Third, it goes to the very heart of the judicial process.
21 I mean, somewhere there has got to be a point at which
22 society can expect the truth is going to be told. I would
23 suppose there are really two such bases, one is to get
24 on the witness stand and swear as a witness, otherwise
25 our whole judicial system breaks down if we can't expect

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2 people to pay attention , the other is the relations
3 and communications between those who are interested in
4 the sentence of a man and the Court itself.

5 Furthermore, there is the irony, perhaps
6 explainable by the fact of your fright and terror at the
7 time of your sentence, that this deception occurred in
8 the very aftermath of the eloquent statements of
9 contrition which you made before Judge Cooper on the
10 earlier occasion.

11 In your favor, of course, is the remarkable
12 series of letters as to your behavior since you have been
13 in custody, the letter from your wife and the fact of her
14 and your child's need for you, and the possibility -- I
15 have down here although one must express scepticism, but
16 I may change that word, although one would express
17 uncertainty about your present state of contrition,
18 primarily the uncertainty that I feel at this time is,
19 after all, that this is the second offense, not the first
20 one, and the second offense so quickly after the first .

21 I don't want to prolong the agony of this
22 proceeding for you or your wife. I am not able conscientiously
23 simply to overlook this event and say that nothing further
24 should result, nor do I think that there is any sense in
25 imposing a further fine on you. You had a heavy fine imposed

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2 on you already and although you and your wife are or
3 at least were quite comfortably off compared to most
4 people, nevertheless, I know at the present time the
5 situation is different.

6 I believe that the sentence here ought to be
7 the same as I would have imposed if you had been tried
8 and found guilty of a perjury count before me, which would
9 have allowed up to five years but which in the past I
10 have only imposed a sentence of one year.

11 But I do want to keep the door open. My
12 attitude on this is perhaps different than some judges.
13 I do want to keep the door open. I have the power to
14 reduce the sentence for four months hereafter and if
15 your record continues to be as well thought of at the
16 end of that period as it now is, I will entertain a motion
17 for reduction and would expect to grant a very substantial
18 reduction of the one-year sentence that I am imposing
19 at the present time.

20 So what I am really doing in my own mind is to
21 impose a maximum of one year at this time with the idea
22 that if there is justification for it during the period
23 in which I have the power to grant a motion to reduce,
24 namely, four months, at the end of that period I invite
25 a motion to reduce sentence.

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3 Therefore, it is adjudged that the defendant
4 be committed to the custody of the Attorney General or
5 his authorized representative for a period of one year,
6 the sentence to commence upon the expiration of the
7 sentence of custody presently being served by the defendant.

8 Mr. Yamada, do you understand what it is I have
9 done at this time? Do you have any questions about it?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Mrs. Yamada, do you understand?

12 MRS. YAMADA: Yes.

13 THE COURT: Very well. I earnestly hope you
14 will be in a position to apply for and receive a substantial
15 reduction of the one year and I am asking Mr. Pollner
16 not to make that motion until nearly four months from now.

17 All right. I wish the Yamada family good luck
18 and I hope this is the last time that they will ever be
in Court.

19 MR. POLLNER: One more, your Honor.

20 THE COURT: There are many open counts.

21 MR. POLLNER: Yes, your Honor. I move to now
22 dismiss the outstanding open counts in the indictment.

23 MR. PUTZEL: Those counts are 1 through 5, 7
24 through 11, and the Government has no objection.

25 THE COURT: On the consent of the Government,
those counts are dropped.

GOVERNMENT SENTENCING MEMORANDUM

III: bg
74-0050

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

v. : 74 Cr. 100

AKIYOSHI YAMADA, :

Defendant. :

GOVERNMENT'S SENTENCING MEMORANDUM

The Government respectfully submits this memorandum to set forth the facts which would have been established at the trial of the defendant Akiyoshi Yamada and to bring to the attention of the Court certain information which we believe to bear upon the sentence to be imposed by the Court. Yamada has entered a plea of guilty to the conspiracy count and five substantive counts of the indictment charging him with knowingly submitting false and fraudulent letters to the Court in violation of Title 18, United States Code, Section 1001. It is our position that

GOVERNMENT SENTENCING MEMORANDUM

REFILE:bg
74-C050

these crimes are matters of the utmost gravity which, in the factual context of this case require a stern response by the Court.

1. Facts.

In May of 1973, Akiyoshi Yamada entered guilty pleas to conspiracy charges in each of three separate fraud cases then pending against him in this District. The pleas were entered under an agreement by which Yamada would make himself available to the Government as a witness concerning all matters in which he had in any way participated that he would cooperate completely with the Government in all such cases, would testify truthfully as necessary at any trial, grand jury, S.E.C. or other proceeding, and that he would refrain from any further criminal activity. In exchange for this promise of cooperation, the Government agreed not to proceed against Yamada in any other pending case or investigation involving him. The precise details of Yamada's possible criminal exposure are set forth in Appendix A hereto, a letter to the United States Attorney's Office from the S.E.C. attorney in charge of Yamada-related cases.

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On June 26, 1973 Yamada appeared for sentence before the Honorable Irving Ein Cooper, who imposed a sentence of two years' imprisonment and a consecutive five year term of probation on the three separate convictions and directed Yamada to surrender on or before August 1, 1973. We attach as Appendix B hereto the minutes of the Court's imposition of sentence.

The minutes of such sentence reveal the motive which prompted the commission of the crimes presently before the Court. In sentencing Yamada, Judge Cooper commented on the absence of any apparent charitable concern ever actively in Yamada's record. He stated:

"Yesterday I sentenced two human beings, brothers. No prior record, one a school teacher. They both collapsed when in connection with a financial enterprise they had launched, it began to get into difficulty, and in order to extricate themselves they conceived of some half baked notion which they thought would help them out of their difficulties. What they did was an isolated instance or two.

As a fact finder -- and I am pretty good at that -- I had to declare that contrition had set in.

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It was deep; it was of a quality that was convincing to this Judge. They had shaken themselves up so badly that the torture which was inflicted over what had happened to them was the greatest punishment that could have possibly taken place. I am not prepared to say, by any means, that that is true here.

But there are assets that a Judge must consider. You pled guilty. Oh, I have been around long enough to know that in the long run you undoubtedly would have been found guilty. This is a resourceful governmental agency. But you did plead guilty. You have no prior record. But there are not testimonials such as the present yesterday of moral deportment over a substantial period of time that seem to stand beside those which lead to your sentence. You haven't got them. And you don't have. I can't look to a boy who has done things of quality, who hasn't got to these things. You know; who collected a sum of his time to violate the Constitution. I'm surprised. Alright. Every time I turn you are fined. Every document I pick up denounces you. These valuable assets that come to a man in his hour of need are not here. They are moral, ethical values, that have a great deal to do with a Judge's concern

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as to what has happened to the human being sentenced." (T. 17-19) (Emphasis added.)

Immediately after the imposition of sentence, Yamada commenced the fraud which is the subject of the instant charge. Having never "lent aid to those who were suffering," he decided to concoct evidence of such charity in order to persuade Judge Cooper to reduce the two-year sentence imposed on June 26, 1973.*

In early July, 1973 he caused his attorney to file a Rule 35 motion before Judge Cooper.** Shortly

* Only a technicality prevented this case from being prosecuted as a violation of Yamada's probation. At the conclusion of the June 26, 1973 minutes of sentence, the Court explicitly stated that the five-year term of probation imposed on Yamada with respect to one of the three conspiracy convictions was to run consecutively to the term of imprisonment. Thus, the crimes charged in the instant indictment, which were committed before Yamada's surrender, fell before the commencement of the probationary term. (T. 32)

** There is no evidence whatsoever that Yamada's counsel knew of his fraudulent scheme. To the contrary, the affidavits in support of the Rule 35 motion show that defense counsel was totally unaware of the fraudulent letters to Judge Cooper and of Yamada's false claim that he had long been involved in rehabilitating narcotics addicts.

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thereafter, he commenced to manufacture letters purporting to detail a longstanding involvement in rehabilitating narcotics addicts. Through his secretary, Alida Bernstein, Yamada located one Paul Rogers, who was then employed in a Manhattan methadone clinic. Through Miss Bernstein, Yamada paid Rogers a sum of money (approximately \$300) to fabricate two letters on stationery of the clinic describing Yamada's fictitious efforts to assist addicts to find employment, to stay away from narcotics, and so forth. The Government is in possession of the stenographic notes dictated by Yamada to Miss Bernstein which formed the basis for the letters, each of which is set forth in the indictment and reproduced herewith as Appendix C. We need hardly add that Yamada had never involved himself in any such charitable activity, nor had he ever met either of the purported signers of the two letters.

The letters betray a deliberate effort to fabricate information which Yamada knew would command themselves to Judge Cooper's attention. The first letter, for example, purportedly written by the physician-director of the clinic, states, "I find it inconceivable that a man

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who has devoted a tremendous amount of time over the past two years to interview our patients and help secure employment for many should be sentenced for violations which were committed before entering a new field of business and social outlook." Such language appears almost a direct response to an observation of the prosecutor at the time of sentence: "... having recently re-read your Honor's opinion in the Benjamin Haggett motion for reduction of sentence I know that your Honor is of the very strong opinion that it is as much the conduct of the defendant after the crimes have been committed as it is his conduct before which must be taken into account by a sentencing judge." (T. 7)

Yamada also composed the fictitious letter contained in Count Three. The purported "Flushing Center for Drug Counseling and Rehabilitation" did not exist, and Yamada caused fake stationery to be printed especially for the occasion, to lend an appearance of legitimacy to the letter. The address and telephone

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number appearing on such stationery are those of Yamada's then-chauffeur, a young, uneducated man named Gerald Williams. Williams has testified before the Grand Jury-- and was prepared to testify at trial--that Yamada directed him to sign and send the letter as the "Community Director" of the non-existent drug agency.

With respect to the letter set forth in Count Four, Williams testified that Yamada had drafted the letter and given it to his chauffeur with instructions that he should have one of "his people" copy it in her own hand and that he should forward the scrawled copy to Judge Cooper. Accordingly, Williams's wife, a woman of little education and of no real comprehension of what she was being asked to do, wrote the letter using Yamada's text, and Williams mailed it. The letter is designed quite clearly to convince Judge Cooper in the most dramatic terms that he had simply been unaware of Yamada's considerable charity toward the underprivileged.

The final letter set forth in the indictment was drafted jointly by Yamada and Edward Loughran, Jr., who, at that time was a co-venturer with Yamada in an

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entertainment booking enterprise called Phoenix Entertainment Associates, Inc. Contrary to the implication contained in the letter--and to Yamada's representation to the Court at the time of his plea of guilty to this indictment--Phoenix was essentially a two-man operation run jointly by Yamada and Loughran and consisting of a secretary (Miss Bernstein) and a chauffeur (Mr. Williams). Attached to the letter was a bogus "copy" of a letter to Yamada's probation officer, a letter which was never received by the probation department. Both letters are included in Appendix C hereto. Both take pains to take the probation officer to task for failing to investigate Yamada's background. The Loughran letter, for example, states "Over the past few months I have made numerous telephone calls, was unable to reach [the probation officer] and never even got a message that he had returned a call. I find it strange that a probation officer would make no effort to contact a client's employer." The statement was a complete fabrication, designed to afford the Court a plausible explanation for a failure of the probation

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department to account for Yamada's newly-discovered charitable good works.

In addition to the letters set forth in the indictment, the Government would have proven that Yamada solicited additional fake letters from Miss Bernstein and her fiance which were shown to Yamada and then destroyed before being mailed. Finally, we would have offered Miss Bernstein's stenographic notes of a letter purportedly written by Loughran's father--who was at that time the Commissioner of Immigration of the Immigration and Naturalization Service--a letter which was dictated by Yamada but never sent.

2. Yamada is entitled to no consideration
whatsoever for any previous or future co-
operation with the Government.

We stress at the outset that, upon this sentence, Yamada is entitled to no consideration whatsoever for any previous or future cooperation with the Government. Such cooperation was the basis for limiting his substantial exposure to prosecution for other securities frauds and, as the sentencing minutes reveal, was taken into substantial consideration by Judge Cooper on June 26, 1973. Indeed,

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Such cooperation was, in the eyes of the Court, virtually the only consideration which mitigated Yamada's record of almost unremitting fraud. (See Appendix B herein). Moreover, the very crimes which are the subject of the instant charges demonstrate that Yamada violated his agreement with the Government almost as soon as he had made it. Yamada was clearly advised that the commission of any further crimes would subject him to vigorous prosecution by the Government and would constitute a breach of the agreement. We are frank to advise the Court that we have considered prosecuting this defendant for his various unprosecuted frauds of which we have knowledge; we have determined, however, that sufficient ambiguity exists as to whether Yamada understood that such consequences could flow from future criminal acts that we will not proceed on such cases. Nevertheless, it is clear that Yamada breached his agreement with the Government by committing the crimes presently before the Court. Moreover, the fraud perpetrated by Yamada has substantially vitiated his usefulness as a Government witness in any future prosecutions, thus rendering such cooperation far less significant than was anticipated.

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by Judge Cooper at the time of the sentence imposed last year.* Finally, we submit that the fraud perpetrated by Yamada upon the Court represents the antithesis of cooperation or of genuine contrition for his past fraudulent activities.

3. Yamada's fraudulent scheme was carefully contrived effort to obstruct justice.

The fraud attempted by Yamada is characterized by his counsel as having been motivated "out of pure fear" by a man "overcome by emotion." (Yamada's sentencing memorandum, p. 6). We respectfully submit that the fraud set forth above was anything but a frenzied, last-minute act of panic. It was a calculated, well-thought out plan to deceive the Court. As we have shown above, it was designed to appeal to those concerns uppermost in the mind of Judge Cooper. Moreover, the letters

* Indeed, in the one trial where Yamada has testified as a Government witness, defendants have recently moved for a new trial on the sole basis that Yamada's testimony has been shown to be unreliable in light of the subsequently-committed crimes alleged in this indictment. While we do not believe that this claim has any merit--and while we have no evidence that Yamada perjured himself in that case,--the motion illustrates the sort of problems which we may readily anticipate in any future case in which Yamada testifies.

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are well-organized, contain every appearance of genuineness and, in short, were clearly carefully aimed at deceiving the Court.

Standing by itself, the fraud attempted in this case amounts quite clearly to a serious effort to obstruct justice by tampering with the Court's sacred obligation to impose sentence. Yamada's counsel appears to suggest that the submission of the false letters amounted to the commission of little more than misdemeanor-type offenses (Sentencing Memorandum, p. 7). With respect, we urge that the offenses committed by this defendant strike at the very heart of the criminal justice system and must not be tolerated as mere misdemeanors. Every judge who wrestles with his conscience to impose a just sentence must rely almost exclusively upon information provided him by others. Such information is as essential to the sentencing process as testimony under oath is to any court proceeding. Abuse of this system, especially under the aggravated circumstances presented here, amounts to a serious obstruction of justice and should be punished as such.

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4. Yamada thoughtlessly drew innocent
individuals into criminal activity.

The extraordinary irony of the fraud set forth above is that this defendant, in asserting to Judge Cooper that he was reforming narcotics addicts, was actually drawing various individuals into the commission of serious crimes. Our interviews of Miss Bernstein, Mr. Williams and Mrs. Williams convince us that, although they knew that it was wrong to submit forgeries to the Court, they did so because Yamada had prevailed upon them to help him. Each of these individuals, to our knowledge, had no prior involvement with the law, yet each could well have suffered totally unforeseen, serious consequences from such actions. Moreover, the physician whose name was forged to the first letter and the probation officer who was unjustly maligned in several of the letters were also victimized by the fraud. In short, Yamada rather thoughtlessly drew others into this matter at precisely the time when he was seeking to demonstrate to Judge Cooper that he possessed a special kind of thoughtfulness for others.

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5. In the context of Yoneda's offer of
penitence his fraud on the Court
must be viewed as an act of extra-
ordinary harshness.

In the context in which this case arises, the fraud committed by Yoneda is especially serious. By pleading guilty and agreeing to testify as a Government witness to his manifold fraudulent activities, Yoneda assumed a pose of contrition concerning such frauds which, it is now clear, was merely a device to reduce or, hopefully, eliminate imprisonment for such crimes.* In exhibiting the fraudulent letters to Judge Cooper, Yoneda demonstrated convincingly that he fully expected to manipulate the Court, just as he had previously manipulated the victims of his financial frauds. Moreover, the statement

which followed his sentence by Judge Cooper, Yoneda stated to the Court: "Your Honor, after great reflection and consideration I have realized the harm, the devastating effects of my actions during 1969, 1970 and 1971; the effect of the harm on not only on myself but on my family, wife Linda and daughter, and I realized then, as I do now, that to make amends I could have to cooperate fully so that these恶行 can come to some resolution. It is in this spirit that I have devoted as much of my time as requested to the various Government agencies in the past and I intend to do so in the future." (Appendix B, pp. 12-13) Such a statement must be viewed as an insincere expression of contrition and a cynical effort to parlay cooperation into a suspended sentence.

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themselves betray a condescension and a cynicism exactly the opposite of the humane qualities which Yamada sought to present to the Court. In any defendant, such conduct is inexcusable. With respect to a defendant who holds himself out as a contrite cooperating witness, it is especially intolerable. At short, Yamada has demonstrated a cynical disregard for the administration of justice and an attitude that this Court is as vulnerable to deception as any victim of a securities fraud. Such an attitude must not be tolerated.

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CONCLUSION

In writing the above, we are mindful of the fact that this Court is especially sensitive to the sentencing process as a focal point of the criminal justice system. The case before the Court presents a cynical abuse of such system by an individual pretending to make his peace with society. For all of the reasons set forth above, the crimes to which Akiyoshi Yamada has pleaded guilty should be punished by^a substantial term of imprisonment consecutive to the term which the defendant is presently serving.

Respectfully submitted,

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